

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 3 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING ARTICLE 6, DIVISION 1, SECTIONS 36.0101 THROUGH 36.0115; AND AMENDING CHAPTER 5, ARTICLE 4, DIVISION 1 BY AMENDING SECTION 54.0105, ALL RELATING TO SIDEWALK VENDING.

Chapter 3

Business Regulations, Business Taxes, Permits and Licenses

Article 6: Sidewalk Vending

Division 1: Sidewalk Vending

§36.0101 **Title**

This Division shall be known as the Sidewalk Vending Regulations. This Division regulates sidewalk vendors on public property.

§36.0102 **Definitions**

The following definitions apply to Chapter 3, Article 6, Division 1; words and phrases whenever used in this Division shall be construed as defined in this section, unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

Above-ground structure means any structure affixed to a sidewalk, including a street light, tree well, parking meter, utility structure, utility box, bike rack, scooter corral, mailbox, trash can, elevator, kiosk, newspaper rack, picnic

shelter, bench, table, wall, sign pole, traffic signal pole, signal pushbutton pole, and stairs.

Ballpark District has the same meaning as in section 59.0102 of this Code.

Beach access point means public stairways, ramps, seawalls, and other physical access points to the beach.

Best management practices has the same meaning as in section 43.0302 of this Code.

Business Tax Certificate means a tax certificate issued by the City Treasurer pursuant to Chapter 3, Article 1 of this Code.

Conveyance means any non-motorized wheeled device used to carry persons or property and includes pushcarts, pedal-driven carts, and wagons.

East Village District means the area bounded by Harbor Drive, Park Boulevard, 10th Avenue, Market Street, 22nd Street, Commercial Street, 17th Street, Logan Avenue, and Sigsbee Street.

Encroachment Permit means any permit issued for encroachment on the public right-of-way, including public right-of-way enhancement program permits and right-of-way permits, but excluding permits for *hardscape* improvements.

Goods means items, personal property, merchandise, or any other similar item that is generally sold, including food and beverages.

Hardscape means paving material, including tiles, mortared pavers, decomposed granite, colored or patterned concrete with a tile, brick, or stone

appearance, or a paving material with enhanced concrete that has an exposed aggregate, colored, or salt finish.

High-traffic bike and shared use path means Bayside Walk; Bayshore Bikeway; Ocean Front Walk; Crown Point Bike Path; La Jolla Shores Boardwalk; Liberty Station NTC Path; Mission Bay Bike Path; MLK Promenade; Ocean Boulevard Bike Path; Ocean Beach Bike Path; and San Diego River Bike Path.

High-traffic sidewalk means Fourth, Fifth, and Sixth Avenues between Broadway Avenue and Harbor Drive located in Downtown, India Street between Ash Street and West Kalmia Street located in Little Italy, and San Diego Avenue between Conde Street and Twiggs Street in Old Town.

Loading zone means the space adjacent to a curb designated for the loading or unloading of passengers or materials.

Major transit stop means the portion of a site designated as the passenger loading area that contains any of the following: an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a service interval of 15 minutes or less during the morning and afternoon peak commute periods.

Permittee means the person named as permittee on a duly issued vending permit.

Permitted event means any event that has a special event permit, park use permit, or lake use permit, including farmers markets, street fairs, races, and private events.

Plaza means a public square or other large urban open space typically 1,000 square feet or greater in size under the control of the City's Parks and Recreation Department and designated as a City plaza, which is primarily intended to allow the public to congregate to enjoy surrounding public amenities, such as fountains, benches, tables, landscaping, or historical structures.

Portable cooking equipment means any gas-fueled appliance used to heat, cook, or prepare food or beverages on a conveyance by a sidewalk vendor.

Public park means any property designated, dedicated or developed by or on behalf of the City of San Diego for park or open space use, including sidewalks and paths within the park or immediately adjacent to the park perimeter.

Public right-of-way means a public easement for streets, alleys, or other uses, other than a sidewalk.

Residential means any area that is zoned exclusively for residential uses.

Roaming sidewalk vendor means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

School means an institution of learning that offers instruction in those courses of study required by the California Education Code or that is maintained pursuant to standards set by the State Board of Education. This definition does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college, or university.

Services are activities involving the performance of work for others or the provision of intangible items that cannot be returned once they are provided.

Examples include hair braiding, face painting, massage, yoga, fortune telling, tattooing, and dog training.

Sidewalk means a public paved or *hardscape* path or walkway that is specifically designed for pedestrian travel. It excludes any area primarily designed for use by vehicles or the conveyance of storm water, any area planted with landscaping, or any area primarily consisting of dirt or sand.

Sidewalk vendor means a person who sells *goods* from *vending equipment* or from one's person upon a *sidewalk*. It includes both *roaming sidewalk vendors* and *stationary sidewalk vendors*.

Stationary sidewalk vendor means a *sidewalk vendor* who *vends* from a fixed location.

Summer moratorium means the Saturday prior to Memorial Day and the preceding Saturday and Sunday through Labor Day.

Vend or *vending* means with respect to any *goods*, to sell, offer to sell, expose or display for sale, solicit offers to purchase, barter, or require someone to negotiate, establish, or pay a fee before providing *goods*, even if characterized as a donation, on a public street, alley, highway, parking lot, *sidewalk*, or *public right-of-way*.

Vending equipment means any *conveyance*, table, pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or any other free-standing equipment used for *vending* on the *sidewalk*.

Vending permit means a written City of San Diego approval required prior to *vending*.

§36.0103 **Vending Permit Requirement**

- (a) No vending shall take place except in accordance with the provisions of this Division or when otherwise authorized by the City.
- (b) All sidewalk vendors shall obtain a vending permit prior to vending on any sidewalk. Permits shall be issued by the City Manager or designee, unless otherwise specified in the Code.
- (c) A vending permit shall be valid for one year from the date of issuance and must be renewed annually. A vending permit may only be issued to an individual at least eighteen years of age. Any sale, assignment, or transfer of the vending permit is prohibited. A vending permit that is sold, assigned, or transferred is void.
- (d) To obtain a vending permit, a sidewalk vendor must submit the following information on a permit application form provided by the City:
- (1) the name, address and telephone number of the sidewalk vendor;
 - (2) proof of valid, government-issued photo identification;
 - (3) the name and business address of the company, partnership, or corporation if the sidewalk vendor is an agent of a company, partnership, or corporation;
 - (4) a current valid business tax certificate issued to the sidewalk vendor, or if the sidewalk vendor is an employee, a current valid business tax certificate for the business employing the sidewalk

vendor along with proof of employment, such as a current pay stub;

(5) proof of a California Department of Tax and Fee Administration seller's permit applicable to the sidewalk vendor to the extent required by law that notes the City of San Diego as a location or sub-location, which is valid for the duration of the vending permit;

(6) for those sidewalk vendors selling food, proof of both:

(A) a valid San Diego County Environmental Health Permit applicable to the vending equipment to be used for food preparation and storage to the extent required by law; and

(B) either a Manager's Food Safety Certificate or a San Diego County Food Handlers Card applicable to the sidewalk vendor to the extent required by law;

(7) a certification by the sidewalk vendor that to the sidewalk vendor's knowledge and belief, the information contained on the form is true; and

(8) such other information as the City Manager deems reasonably necessary to administer this Division.

(e) Each vending permit application shall be accompanied by a non-refundable permit fee and a signed waiver of release and indemnification consistent with section 36.0103(g).

(f) Each individual who intends to vend on a sidewalk must complete an application even if the individual:

- (1) is employed or engaged by another individual or a business; or
- (2) will use *vending equipment* owned by another individual or a business.

(g) Release and Indemnification Requirements

(1) If the City issues a *vending permit*, as a condition of such permit issuance, *permittee* agrees to waive and release the City and its officers, agents, employees, contractors, and volunteers from and against any and all claims, costs, liabilities, expenses, or judgments including attorney fees and court costs arising out of any *vending* activities or any illness or injury resulting therefrom, and shall agree to indemnify and hold harmless the City, its officers, agents, employees, contractors, and volunteers from and against any and all such claims, whether caused by negligence or otherwise, except for illness and injury resulting directly from gross negligence or willful misconduct on the part of the City, its officers, agents, employees, contractors and volunteers.

(2) If the City issues a *vending permit*, as a condition of such *vending permit* issuance, *permittee* shall acknowledge that the use of any *sidewalk* is at the *sidewalk vendor's* own risk and the City will not take any steps to ensure any *sidewalk* is safe or conducive to the *vending* activities.

(h) A permittee must immediately notify the City in writing of any changes to the facts provided in a vending permit application after the issuance of a vending permit.

§36.0104 **Permit Denial and Revocation**

- (a) A vending permit application shall be denied if the applicant had a prior vending permit revoked within the past 36 calendar months. A vending permit application may also be denied or a vending permit may be revoked or not renewed for any of the following reasons:
- (1) provision of false statements, information, or facts by the sidewalk vendor in a vending permit application;
 - (2) failure of the sidewalk vendor to notify the City Manager within five business days of any changes to the facts provided in a vending permit application after the issuance of a vending permit;
 - (3) repeated failure of the sidewalk vendor to comply with the regulations in this Division;
 - (4) violations of other local, state, or federal laws while operating as a sidewalk vendor; or
 - (5) the use of any vending equipment in a manner that endangers public health or safety.
- (b) If the application is for the renewal of a vending permit, the sidewalk vendor must pay all outstanding administrative fines and complete any other alternative disposition associated in any way with a previous violation of this Division before a vending permit will be renewed.

- (c) Notice of Revocation of a vending permit with any and all specific grounds for revocation shall be served in writing no less than 30 calendar days before revocation to the address listed on the initial application or to any subsequent address provided to the City by the permittee.
- (d) Any sidewalk vendor whose application for a vending permit is denied or whose vending permit is revoked may appeal such decision to the City Manager by filing a written notice of appeal with the City Manager or his designee within 10 calendar days after receipt of the notice of denial or revocation. The appeal hearing shall be conducted pursuant to the administrative enforcement hearing procedure set forth in Chapter 1, Article 2, Division 4 of this Code.

§36.0105 Sidewalk Vending Generally

- (a) Sidewalk vendors shall visibly display their sidewalk vending permit at all times when vending, including any photo identification issued by the City.
- (b) Vending activities on residential blocks may occur only between the hours of 7:00 a.m. and sunset.
- (c) Vending activities on non-residential blocks may occur only between the hours of 6:00 a.m. and 10:00 p.m. or the hours of operation imposed on other businesses on the same block, whichever is least restrictive.
- (d) A vending permit does not provide an exclusive right to operate on any sidewalk or portion thereof.

- (e) Sidewalk vendors shall comply with all applicable laws relating to the employment of minors. Any minor assisting with or engaged in vending shall be accompanied by a sidewalk vendor with a valid vending permit. Any and all actions of the minor related to vending, including any violations committed by the minor, are attributable to the sidewalk vendor.
- (f) Only roaming sidewalk vendors may operate in residential areas.
- (g) Sidewalk vendors are responsible for ensuring that the 10-foot area immediately surrounding the vending space is kept clean and free of trash and debris associated with their vending operation.
- (1) All sidewalk vendors shall provide a trash receptacle for customers and shall ensure proper disposal of customer trash. The trash receptacle must be large enough to accommodate customer trash so that public trash receptacles located on any block for use by the general public do not have to be used by customers.
- (2) Sidewalk vendors shall not dispose of customer or sidewalk vendor trash in trash receptacles that the City provides for public use.
- (h) Sidewalk vendors engaged in the vending of food or beverages shall have hand sanitizer located in a conspicuous location readily available for use by customers.
- (i) Sidewalk vendors shall not display any goods for sale on the ground or on any above-ground structure.
- (j) No vending shall take place in or from a parked vehicle or to any individuals traveling in a motor vehicle along a public roadway.

- (k) Sidewalk vendors shall not leave vending equipment or goods unattended at any time.
- (l) Sidewalk vendors shall not connect to an external source of power, water, or any other utilities located on public property.
- (m) To maintain accessibility standards, sidewalk vendors shall not place or allow any obstruction to be placed on the sidewalk that would reduce the width of the sidewalk to less than forty-eight inches excluding the curb, except for the brief duration of time for a roaming sidewalk vendor to conduct a sale. Notwithstanding the foregoing, sidewalk vendors shall immediately move to provide access to the sidewalk to avoid impeding the flow of pedestrian or other traffic.
- (n) No stationary vending is permitted on a sidewalk less than six feet in width.
- (o) Sidewalk vendors shall not sell or offer to sell services, or engage in or offer to engage in any type of rental activity, including the rental of any goods or services.
- (p) Sidewalk vendors shall display only goods that are available for immediate on-site sale.
- (q) Sidewalk vendors shall not display any signs advertising any off-site business.
- (r) Sidewalk vendors who vend any food, beverage, or liquid product must implement the following best management practices:

- (1) possess spill kits that are comprised of paper towels, cloth towels, cat litter, or sand at all times while vending;
 - (2) remove all spill materials from the public right-of-way and sidewalks once the spilled material is absorbed off the ground;
 - (3) capture and prevent spills leaving the area and moving into the surrounding streets from entering the storm water conveyance system, including curbs, gutters, and storm drains;
 - (4) properly dispose of grease, either by hiring and utilizing an on-site grease collector or collection system, or at an acceptable facility;
and
 - (5) ensure that any water or rinse residue used for vending activities (e.g., cooler water, ice, food preparation water) is not disposed in the curbs, gutters, streets, drains, or on any public property.
- (s) As it relates to the space occupied by the sidewalk vendor as set forth in section 36.0108(b)(2), sidewalk vendors may not use more than five square feet or 25 percent of the vending space, whichever is less, for items not directly related to vending operations.
- (t) Vending that substantially and adversely affects the health, safety, or welfare of any individual is prohibited.
- (u) Sidewalk vendors shall not leave vending equipment on a sidewalk or public right-of-way when not vending or in the immediate process of setting up or concluding vending activity.

§36.0106 **Vending Locations**

(a) No stationary sidewalk vendor shall vend and no roaming sidewalk vendor shall stop to make sales in the following locations:

- (1) in the public right-of-way, or any area that blocks the safe flow of pedestrians or vehicles;
- (2) any public property that does not meet the definition of a sidewalk, including but not limited to any alley, beach, street, street or roadway median, or street end;
- (3) any parking lots;
- (4) on any slope greater than five percent or where signage indicates that wheels must be cramped to the curb;
- (5) any location that obstructs traffic signals or regulatory signs;
- (6) the Ballpark District during an event or game or within three hours before or one hour after an event or game;
- (7) Sports Arena Boulevard between Hancock Street and East Drive during an event or game or within three hours before or one hour after an event or game at the arena;
- (8) within 18 inches from the edge of a curb;
- (9) within 5 feet in front of or 65 feet behind the sidewalk along a bus stop, tram or non-rail trolley stop as measured linearly along the curb from the sign marking the bus stop, tram, or non-rail trolley stop;
- (10) within 10 feet of any;

- (A) driveway;
 - (B) marked crosswalk; or
 - (C) fire escape or emergency exit.
- (11) within 15 feet of any:
- (A) other *sidewalk vendor*;
 - (B) intersection;
 - (C) building entrance;
 - (D) *high-traffic sidewalk*;
 - (E) *loading zone, parking space, or access ramp designed for individuals with disabilities*;
 - (F) outdoor dining or patio area;
 - (G) public restroom;
 - (H) curb ramp;
 - (I) location with a valid *encroachment permit* displayed; or
 - (J) *high-traffic bike and shared use path*.
- (12) within 25 feet of any:
- (A) *beach access point*; or
 - (B) pier.
- (13) within 50 feet of any:
- (A) railroad crossing; or
 - (B) *major transit stop*.
- (14) within 100 feet of:

- (A) the vehicle entrance of any fire station, police department, hospital, lifeguard station, or any other structure dedicated to health and safety emergency matters; or
 - (B) any City street or sidewalk closure.
- (15) within 150 feet of Harbor Drive between Front Street and Park Boulevard during a convention or event held at the San Diego Convention Center or within three hours before or one hour after a convention or event at the Convention Center.
- (16) within 500 feet of:
- (A) any permitted event;
 - (B) any school while children are going to or from the school, during a recess period or within 30 minutes before or after the school's opening or closing hours; or
 - (C) the open-air baseball facility, located in East Village currently known as Petco Park, and the indoor arena located in Midway District currently known as Pechanga Arena within three hours before or one hour after an event or game.
- (b) Stationary sidewalk vendors shall not vend within 50 feet of another stationary sidewalk vendor in any City-designated promenade, except that City-designated promenades that are defined as high-traffic sidewalks shall be subject instead to the prohibition on vending under section 36.0106(a)(11)(D).

- (c) Stationary sidewalk vendors shall not vend within 5 feet of any above-ground structure.
- (d) Stationary sidewalk vendors shall not vend within 15 feet of any fire hydrant or fire lane.
- (e) Sidewalk vendors shall not vend on sidewalks on the following streets during the summer moratorium: Newport Avenue between Abbott Street and Sunset Cliffs Boulevard in Ocean Beach; Ventura Place between Mission Boulevard and Ocean Front Walk in Mission Beach; Garnet Avenue between Ocean Front Walk and Cass Street in Pacific Beach; and Coast Boulevard between Cave Street and the 200 block of Coast Boulevard South in La Jolla.
- (f) Sidewalk vendors shall not vend within the East Village District.
- (g) Sidewalk vendors shall not vend on any City property subject to a lease agreement so long as proper notice is provided of the prohibited location(s).

§36.0107 Vending in Public Parks, Plazas, and Beach Areas

The following provisions apply in public parks, plazas, and beach areas. Where the following provisions are more restrictive than those set forth in section 36.0106, sidewalk vendors shall comply with the more restrictive provisions:

- (a) Sidewalk vendors shall stop vending before the designated closing time of any public park, plaza, and beach area.
- (b) Vending is permitted between 8:00 a.m. and sunset in public parks, plazas, and beach areas where there is no designated closing time.

- (c) Sidewalk vendors shall not vend within 100 feet of another sidewalk vendor.
- (d) Sidewalk vendors shall not vend within 25 feet of any park decorative fountain, statue, monument, memorial, or art installation.
- (e) Subject to applicable law, the City Manager is authorized to enact rules and regulations to prohibit vending in any space that would obstruct, damage or otherwise adversely affect the public's use and enjoyment of natural resources and recreation opportunities or contribute to an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of a public park. If the City Manager enacts any such rules and regulations pursuant to section 36.0107(e), it shall be unlawful to vend in violation of any such rules and regulations.
- (f) Stationary sidewalk vendors are not permitted within any area of a public park or plaza if the public park or plaza operator has signed an agreement for concessions that exclusively permits the sale of goods by a specified concessionaire, provided that notice by signage or other means is provided to the stationary sidewalk vendor.
- (g) Vending activities are prohibited in the following locations in Balboa Park:
- (1) within 25 feet of: El Prado, Village Place, Pan American Road East, Pan American Road West, Pan American Plaza, Old Globe Way, Chapel Road, Spanish Village, Plaza de Panama, Plaza de California, Plaza de Balboa, War Memorial Building, the Carousel.

Spreckels Organ Pavilion, Presidents Way, or any covered walkway.

(2) within 25 feet of the following gardens: 1935 Old Cactus Garden,

Alcazar Garden, Casa del Rey Moro Garden, Desert Garden,

Florida Canyon Native Plant Preserve, Inez Grant Parker Memorial

Rose Garden, Marston House Garden, Palm Canyon, Trees for

Health Garden, Veterans Memorial Garden, and Zoro Garden.

(3) within 50 feet of the Botanical Building or Lily Pond.

(4) within Balboa Park between December 25 and January 1.

(h) Consistent with applicable law, the City Manager has the authority to reasonably limit the number of *sidewalk vendors* in certain parks by requiring *sidewalk vendors* to obtain an additional park sales permit to vend in the following parks: Balboa Park, Mission Bay Park, Ocean Beach Park, Mission Beach Park, Kellogg Park, Ocean Boulevard Park, Ellen Browning Scripps Park, South Mission Beach Park, and Torrey Pines City Park. If the City Manager requires an additional park sales permit pursuant to section 36.0107(h), it shall be unlawful to vend in such park without such permit.

(i) Vending is prohibited during the *summer moratorium* in Balboa Park, Mission Bay Park, and the Shoreline Parks, which are those parks contiguous to the shoreline or beach in the communities of Ocean Beach, Mission Beach, Pacific Beach, and La Jolla.

- (j) Vending is prohibited in the following locations: Sunset Cliffs Natural Park and Mission Beach Park as defined in section 63.50 of this Code.
- (k) Sidewalk vendors shall not use amplified or non-amplified sound-making devices in conjunction with vending, such as speakers, microphones, public address systems, bells, and chimes.

§36.0108 Sidewalk Vending Equipment and Goods

- (a) Notwithstanding any specific provisions of this Division, a sidewalk vendor shall not use vending equipment in a manner that violates any law by endangering the safety of person or property or causing a public or private nuisance.
- (b) Sidewalk vendors shall not:
 - (1) Display goods less than 28 inches or more than 34 inches off the ground;
 - (2) Occupy a space exceeding 24 square feet, greater than 8 feet in length, or 4 feet in width including vending equipment, but excluding the space the sidewalk vendor's own person occupies;
 - (3) Use or display any item, equipment, or structure greater than 8 feet in height or extends or overhangs more than 4 inches, unless the protrusion is located 27 inches or less, or 80 inches or more from the ground;
 - (4) Use amplified sound-making devices in conjunction with vending, such as speakers, microphones, and public address systems; and

- (5) Set up customer seating areas. Sidewalk vendors that do not serve food or beverages may use tables only for vending purposes, such as conducting transactions or displaying goods for sale, and may only have a chair for personal use. Sidewalk vendors that serve food or beverages must conduct all vending from a permitted conveyance in accordance with their health permit from the County Department of Environmental Health and Quality.
- (c) No vending equipment may be attached to or make contact with any utility pole, street sign, bus stop, trash can, traffic pole, or other public structure.
- (d) Sidewalk vendors shall not use:
- (1) portable generators;
 - (2) outdoor wood burning ovens or charcoal barbecues; and
 - (3) gasoline or kerosene.
- (e) Roaming sidewalk vendors shall not use any portable cooking equipment, gas-fueled appliance, or any open flame unless approved and permitted by the County Department of Environmental Health and Quality.
- (f) Notwithstanding subsection (d), stationary sidewalk vendors with required permits from the County Department of Environmental Health and Quality such as a Mobile Food Facilities permit may use portable cooking equipment authorized by such permits in compliance with the California Retail Food Code and subject to the following regulations:
- (1) While the portable cooking equipment is in operation:
 - (A) It must be kept at least 20 feet from any permanent

structure and at least 30 feet from dry grass, grain, brush, or forested area;

(B) It must not be unattended; and

(C) The *stationary sidewalk vendor* shall not smoke or vape.

(2) The *stationary sidewalk vendor* must regularly clean the *portable cooking equipment* to remove grease and food buildup.

(3) The *stationary sidewalk vendor* shall:

(A) use only propane, natural gas, or butane cylinder tanks;

(B) use or store only propane, natural gas, or butane tanks of 20 gallons or less, with a limit of two 20-gallon tanks on a conveyance;

(C) store tanks in an upright position during use and positioned in such a way as to prevent falling, tipping, and tampering;

(D) disconnect all tanks while the *conveyance* is in transit or not in use;

(E) use only tanks with a shut-off valve and a pressure regulator, having hoses of a type approved for use by the manufacturer with the equipment; and

(F) test all connections to the tank for potential leaks using soap and water before each use.

(4) Any *conveyance* that stores a tank shall have two ventilation openings on opposite sides at the cylinder valve level and at least one ventilation opening at the floor level. Each opening shall be a

minimum of 10 square inches, screened with a minimum 16 mesh and shall vent to the exterior of the conveyance.

(5) Stationary sidewalk vendors shall comply with the following fire extinguisher requirements:

(A) Keep an easily accessible, properly charged and maintained 10 BC-rated fire extinguisher on the conveyance at all times and be familiar with its proper use. Stationary sidewalk vendors shall ensure the extinguisher has been serviced within the last year and has a valid California State Fire Marshal service tag attached;

(B) Mount the extinguisher securely to the vending equipment; and

(C) Locate the extinguisher away from the cooking area.

§36.0109 Prohibited Sales

Sidewalk vendors are prohibited from vending the following goods: alcoholic beverages; tobacco and tobacco products; vaping products; smoking and drug related paraphernalia; cannabis and cannabis products; weapons, including knives, guns, or explosive devices; BB devices or imitation firearms; pharmaceuticals; live animals; harmful materials to minors as defined in section 58.07 of this Code; or other products prohibited by local, state and federal laws.

§36.0110 Penalties and Fines

(a) Any violation of this Division by a sidewalk vendor holding a valid vending permit shall be punished as follows:

- (1) an administrative citation and \$100 penalty for a first violation.
 - (2) an administrative citation and \$200 penalty for a second violation within one year of the first violation.
 - (3) an administrative citation and \$500 penalty for a third and each subsequent violation within one year of the first violation.
- (b) Any sidewalk vendor found vending without a vending permit, if required pursuant to this Division, shall immediately cease vending and be subject to the following:
- (1) An administrative fine of \$250 for a first violation.
 - (2) An administrative fine of \$500 for a second violation within one year of the first violation.
 - (3) An administrative fine of \$1,000 for a third violation within one year of the first violation.
 - (4) An administrative fine of \$1,000 for each subsequent violation within one year of the first violation and impoundment of vending equipment pursuant to section 36.0111.
- (c) If a sidewalk vendor provides proof of a valid vending permit issued by the City that is applicable on the date of the violation, the administrative fines shall be reduced to the administrative fine schedule set forth in section 36.0110(a).
- (d) Administrative citations may be appealed pursuant to Chapter 1, Article 2, Division 5 of this Code and all appeals shall be conducted in accordance with Chapter 1, Article 2, Division 4.

- (1) In addition to the powers conferred upon the enforcement hearing officer under section 12.0407 of this Code, such officer shall take into consideration the person's ability to pay the fine upon their request. If the hearing officer finds the person meets the criteria described in California Government Code section 68632(a) or (b), or any successor section, the hearing officer shall order the City to accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to this Division.
- (2) The hearing officer shall have the authority to allow the person to complete community service in lieu of paying the total administrative fine.

§36.0111 Impounding of Vending Equipment

- (a) In addition to the administrative fines authorized by section 36.0110, the City may, upon an individual's fourth or greater violation of this Division, impound *vending equipment* and any *goods* therein.
- (b) The City may immediately dispose of impounded *goods* that cannot be safely stored or that are perishable.
- (c) Any owner of impounded *vending equipment* or any *goods* may, within 10 days, request an administrative hearing before a hearing officer appointed by the City.
- (d) Within two business days of impoundment, the *sidewalk vendor* or the owner of the *goods* or *vending equipment* will receive notice based on the information contained in the *vending permit* application regarding their

rights with respect to the impoundment citation. Failure to provide such notification within two business days shall prohibit the City from charging more than 15 days of impoundment when the owner or sidewalk vendor redeems the impounded goods or vending equipment. The vending equipment and goods will be released to the sidewalk vendor or owner provided that proper proof of ownership is presented, and the City receives payment in full of all administrative costs incurred as a result of the violation. Any unclaimed items will be considered abandoned and forfeited to the City after 90 days following impoundment.

§36.0112 **Applicability**

- (a) Nothing in this Division prevents the City from taking action to further compliance with, or enforcement of, other local, state and federal laws.
- (b) Sidewalk vendors engaged in vending food items are a health-regulated business subject to section 42.0102 of this Code. This Division does not affect the regulation of mobile food trucks as described in section 141.0612, sales out of vehicles as described in section 54.0122, or farmers' markets as described in section 141.0503.
- (c) All individuals engaged in vending subject to the provisions of this Division must comply with the aggressive solicitation prohibitions contained in Chapter 5, Article 2, Division 40 of this Code.

§36.0113 **Non-Applicability**

- (a) The following persons, entities or activities are exempt from the requirements of this Division:

- (1) Any vendor or individual engaged solely in artistic performances, free speech, political or petitioning activities, or engaged solely in vending of items constituting expressive activity protected by the First Amendment, such as newspapers, leaflets, pamphlets, bumper stickers, or buttons;
- (2) Agencies of any federal, state or local governments;
- (3) Any vendor of services that are otherwise permitted or authorized by the City of San Diego; and
- (4) Any lessee or permittee of the City vending on City-owned property where vending is authorized under a City lease or permit.

§36.0114 **Vending that Constitutes an Imminent and Substantial Safety or Environmental Hazard**

The City may require any sidewalk vendor to leave the premises or to remove any vending equipment or goods if the sidewalk vendor is creating an imminent and substantial safety or environmental hazard by the location of the vending equipment or the nature of the goods being offered for sale. If the sidewalk vendor refuses to leave the premises or to remove any vending equipment or goods constituting an imminent and substantial safety or environmental hazard, the City may immediately impound the vending equipment or the goods being offered for sale. Any vending equipment or goods impounded are subject to the provisions of section 36.0111.

§36.0115 **Entrepreneurship Zones**

Notwithstanding sections 36.0105(m) through (n), 36.0105(s), 36.0106, 36.0107(c) through (e), and 36.0107(g), the City Manager is authorized to

designate one or more entrepreneurship zones in the City where sidewalk vendors may vend in these zones subject to the rules and regulations enacted by the City Manager. If the City Manager enacts such rules and regulations pursuant to section 36.0115, it shall be unlawful to vend in violation of these rules and regulations.

§54.0105 Sidewalk Sales and Displays Prohibited

(a) through (b) [No change in text.]

(c) ~~A s~~Sidewalk sales may be permitted in a Special Event Venue pursuant to a Special Event Permit issued under Chapter 2, Article 2, Division 40 of this Code or with a Sidewalk Vending Permit issued under Chapter 3, Article 6, Division 1.

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